

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

WP(C).No. 37745 of 2007(R)

(AGAINST THE ORDER IN E.P.112/05 IN O.S.211/00)

PETITIONER:

**1. NAHAS, AGED 34 YEARS, VILAYIL
KIZHAKKETHIL HOUSE, EZHAMKULAM MURI,
EZHAMKULAM VILLAGE, ADOOR TALUK,
PATHANAMTHITTA DISTRICT.**

**2. NIHAS, AGED 31 YEARS,
THYVILA THEKKETHIL, EZHAMKULAM MURI,
EZHAMKULAM VILLAGE, ADOOR TALUK,
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI. K.SHAJ

RESPONDENTS:

**MASOOD RAWTHER, AGED 66 YEARS
S/O. THAIVILA THECKETHIL,
EZHAMKULAM MURI, EZHAMKULAM VILLAGE
ADOOR TALUK, PATHNAMTHITTA DISTRICT.**

BY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

M.N. KRISHNAN, J.

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W.P.C. NO. 37745 OF 2007

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Dated this the 19th day of December, 2007.

J U D G M E N T

This writ petition is filed against the order of the Munsiff, Adoor in E.P.112/05 in O.S.211.00. The learned Munsiff had issued a show cause notice to judgment debtors 1 to 3 why an action should not be taken against judgment debtors 1 to 3 under Order 21 Rule 32(5) of CPC. The act complained of is that in spite of a decree the judgment debtors have constructed a road along the property which has been restrained by the Court by an order of injunction. The decree holder's complaint, according to the Court below, is supported by the Commissioner's report. A perusal of the order would show that nobody has been examined in this case and I am told by the learned counsel that no opportunity has been given even to file objection to the Commissioner's report and let in evidence in support of the contentions of the judgment debtors. Violation of an

injunction is a serious act which may result in sending the person to the civil prison. It cannot be treated lightly and disposed of. The parties who is alleged to have committed the violation is to be given an opportunity to put forth their case and only after satisfaction on record by evidence adduced further action can be taken. I do not know why the learned Munsiff has issued a show cause notice which I do not find anywhere in the CPC to be done. Therefore, the order under challenge is set aside. The Munsiff is directed to consider Order 21 Rule 32(5) petition independently after permitting both sides to adduce evidence in support of their respective contentions and thereafter decide the question and pass orders.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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